

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

Docket **74-2002**
No.

IN THE
United States Court of Appeals
For the Second Circuit

—
ELGI HOLDING, INC.,

Appellant,

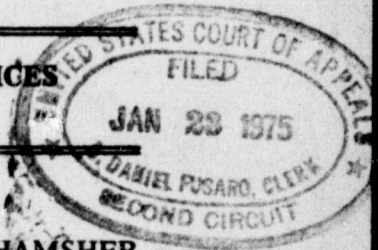
—v.—

INSURANCE COMPANY OF NORTH AMERICA,

Appellee.

—
Appeal From a Judgment Entered In Favor of the Defendant

SUPPLEMENTAL BRIEF AND APPENDICES
FOR THE APPELLANT



F. BERNARD HAMSHER

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STIPULATION.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ELGI HOLDING, INC.

Appellant

-vs-

INSURANCE COMPANY OF NORTH AMERICA

Appellee

STIPULATION

Docket No. 74-2002
Cal. No. 586

It is hereby stipulated by and between F. BERNARD HAMSHEN attorney for the Appellant and OHLIN, DAMON, MOREY, SAWYER AND MOOT, RICHARD E. MOOT, Of Counsel, attorneys for the Appellee, in the above-captioned matter that the Appellant, ELGI HOLDING, INC. be permitted to file with the United States Court of Appeals for the Second Circuit a supplemental brief and appendix in the above-captioned action. *Provided the same does not delay the argument of the appeal set for 1-24-75*

DATED: Buffalo, New York
January 13, 1975.

F. Bernard Hamshen
F. BERNARD HAMSHEN

OHLIN, DAMON, MOREY, SAWYER
AND MOOT

by: *Richard E. Moot*

RICHARD E. MOOT



**IN THE
United States Court of Appeals
For the Second Circuit**

ELGI HOLDING, INC.,

Appellant,

—v.—

INSURANCE COMPANY OF NORTH AMERICA,

Appellee.

**SUPPLEMENTAL BRIEF AND APPENDICES
FOR THE APPELLANT**

STATEMENT OF FACTS

(Numbers in parentheses refer to pages in the transcript.)

On May 7, 1972, the premises known as 46 Skillen Street, Buffalo, New York, was totally destroyed by fire. The cause of said fire was officially categorized as mysterious. (327) (656) The Insurance Company of North America which was the underwriter of the fire insurance policy covering said premises disclaimed liability on the basis of arson. The plaintiff, Elgi Holding, Inc., the owner of said property brought suit against the insurance company.

At the time of the fire, the Buffalo Police Department investigated the cause of the fire. Sergeant Robert R. Ritchie was assigned by the Buffalo Police to gather information and evidence for official purposes. He testified at trial that he was unable to ascertain either the cause of the fire or who may have been responsible therefor. Accordingly, no accusations were ever placed or filed by the Buffalo Police Department. (310,311)

During trial of the plaintiff's case offers of proof were made as to the existence of mysteriously caused fires in the neighborhood, testimony establishing the theft of certain property from the premises (444-453) and syringes (314), all of which were rejected by the trial court.

The defendant's case was confined to two issues of proof. There were witnesses from various banks who testified as to certain aspects of Lester B. Hall's financial condition, Lester B. Hall being the owner of the plaintiff corporation. In addition, the defendant produced testimony from a search examiner who conducted an examination of official judgments filed against Mr. Hall and compiled what is known as an abstract report. (761-789) The abstract report was admitted into evidence over strenuous objection of the plaintiff's counsel. (766-769) The report itself contained a search of debts and judgments prior to and subsequent to the date of fire. The court permitted the reading to the jury of all entries, including those entries applicable to dates after the fire. (769) (776-787)

The defendant insurance company retained a professional independent fire investigator (460) to investigate this particular fire. William Alvine testified at trial that in furtherance of his agreement with the Insurance Company of North America to investigate this fire, he went to the premises several months after the fire, (463) made observations and collected samples for the purpose of analysis. (481) He then remitted these samples collected to the Kendall Infrared Laboratories of Plainfield, New Jersey. (481) They in turn conducted certain tests and experiments on those specimens and forwarded a report of same to William Alvine. (482) The witness never conducted nor observed any of the experiments nor did he purport to have any expert background in that area. Relying on the report supplied to him, he made conclusions as to the cause of the fire. The report of Mr. Alvine along with the report supplied to him by the Kendall Laboratory was admitted into evidence over the objection of plaintiff's counsel. (489-494) (see 790)

The plaintiff, in rebuttal, offered the testimony of one Dr. Angelo Fatta who was an eminently qualified chemical analyst for the Buffalo Police Department. The court on the record refused to permit plaintiff's counsel any more than ten minutes of direct examination of this witness. (797) Nonetheless, even within the short period of time permitted, Dr. Fatta testified as to the unreliability of the tests, experiments and conclusions formulated by the Kendall Laboratories. (799-804)

Respectfully submitted,

F. BERNARD HAMSHER
Attorney for Appellant
Office and P.O. Address
1330 Statler Hilton Hotel
Buffalo, New York 14202

APPENDIX

**Testimony in regard to Judgment Search, beginning
at Page 765 thru 769.**

(Defendant's Exhibit Number 14
marked for identification.)

BY MR. MOOT:

Q I am showing you Defendant's Exhibit 14 for identification and is this the typewritten record of the search which you have described that you made for the ten year period with respect to judgments, liens and tax claims?

A Yes.

Q State and Federal? Unfortunately, I don't see any date or anything on here. This was prepared today?

A Yes, sir, I personally prepared it within the last two days.

Q And this is the basis of your work over the last two days, completed this morning?

A Yes, sir.

Q I wonder if you could just, if you will, mark it on the face there with your name and the date of the search. Now, in response to my instruction, have you included in this summary of your search both the satisfied and unsatisfied judgments or liens or tax claims?

Testimony in Regard to Judgment Search, beginning at
Page 765 thru 769.

A Yes.

Q So that it shows when the lien or judgment or tax claim was filed and if it, in fact, was satisfied, it shows the date of satisfaction as well.

A Yes.

Q If it is not satisfied, then there is no date of satisfaction entered opposite the item, is that correct?

A Yes, that's correct.

MR. MOOT: I will offer this.

MR. HAMSHER: May I see it? Your Honor, if I may, I have no objection to the man's qualifications. I have no quarrel with the search. I see in my review of ' however, that it contains many matters current, 1973, 1974. I don't see how those bear - -

THE COURT: Mr. Moot, do those have any bearing on our present lawsuit?

MR. MOOT: I surely think they do, your Honor. Amongst other items in the plaintiff's direct testimony, was that Mr. Mosey who testified here

Testimony in Regard to Judgment Search, beginning at
Page 765 thru 769.

would let him have money, Mosey
would let him have money anytime
he wanted it and another time he
said he had a line of credit for a
hundred or two hundred thousand
dollars. He claims to have an in-
vestment worth millions and I think
when we consider the veracity of
those statements, the fact that these
unsatisfied claims remain against
his name at the present time is cer-
tainly germane.

THE COURT: May I see it, please?

MR. MOOT: Certainly.

THE COURT: These also indicate not only
when judgments were entered, but
also when they were satisfied?

THE WITNESS: If they were satisfied, yes,
there is a notation there.

THE COURT: If they were not satisfied, then
there is no notation on the search?

THE WITNESS: Yes, your Honor.

THE COURT: All right. You searched in the
Erie County Supreme Court, the re-
cords of Erie County Clerk and also

Testimony in Regard to Judgment Search, beginning at
Page 765 thru 769.

the City Court of Buffalo, is that
true?

THE WITNESS: Only transcripts from the City
Court of Buffalo.

THE COURT: No other court or no other
clerk's office?

THE WITNESS: No, sir.

THE COURT: Did you also search the records
of the United States District Court
here?

THE WITNESS: We have a system by which - -

THE COURT: Did you or did you not, Mr.
Day?

THE WITNESS: No, sir.

THE COURT: You did not. Are these, -
they are not in chronological order,
though, are they, Mr. Day?

THE WITNESS: No, they aren't.

THE COURT: 69, 70, 71.

THE WITNESS: They are in order as to types.

MR. MOOT: Your Honor, I believe there
are three different categories.

THE COURT: They are in three categories?

Testimony in Regard to Judgment Search, beginning at
Page 765 thru 769.

THE WITNESS: Yes.

THE COURT: Mr. Hamsher, I will overrule
your objection and I will permit the
testimony about the complete docu-
ment.

MR. HAMSHER: I will take exception, your
Honor.

(Defendant's Exhibit Number 14
received in evidence.)

MR. MOOT: Referring - -

MR. HAMSHER: Your Honor, could I be permit-
ted to state my objection, or per-
haps in a bit more detail in this
matter?

THE COURT: Ladies and gentlemen, I think
Mr. Hamsher should be given that
opportunity. Could you step into
the corridor, please?

(Jury escorted from the court-
room)

MR. HAMSHER: Your Honor, the basis of my
objection is as I understand, the

* * * * *

Arguments pertaining to Admission and Testimony relating to the Kendall Laboratory Report, beginning at Page 481, 489 thru 494.

material from the floor area?

MR. HAMSHER: Excuse me. I am going to object to any testimony on the subsequent laboratory test unless it shows, one, he conducted the test, and two, he is qualified to conduct them, and third, he is schooled in inorganic chemistry or something along those lines.

MR. MOOT: Your Honor, the laboratory test and the results of it are attached to the report which Mr. Hamsher is examining and he knows the tests were made.

THE COURT: Mr. Moot, why don't we at least have the foundation. Let us have the foundation for how he had the tests made.

BY MR. MOOT:

Q Were samples taken from this area and submitted to a laboratory for tests?

A Yes, in various areas throughout the scene, they were bagged, tagged, and then submitted to an independent laboratory for chemical analysis.

* * * * *

Arguments pertaining to Admission and Testimony relating to the Kendall Laboratory Report, beginning at Page 481, 489 thru 494.

as an authority on performing these type of tests for determination of hydrocarbons and various other items.

THE COURT:

When you say "hydrocarbons", of course, that covers a tremendous range of things, certainly oil, gasoline, other fossil fuels, generally coal and other things. That is hydrocarbon?

THE WITNESS:

Just about every known hydrocarbon, your Honor.

THE COURT:

Ladies and gentlemen, so Mr. Hamsher can explain to me his objection, can you just step into the hall for a minute and we will have you right back.

(Jury escorted from the courtroom.)

THE COURT:

Mr. Hamsher.

MR. HAMSHER:

Yes, sir. Your Honor, I have a three-part objection. Part one, I do not believe that this witness has properly qualified himself to testify from any chemical report relative to

Arguments pertaining to Admission and Testimony relating to the Kendall Laboratory Report, beginning at Page 481, 489 thru 494.

chemical analysis. As to his visual observations and as to his applying those visual observations to his profession and time he has been in the business, I have no objection. I will be happy to cross examine him on that, but with respect to him using a report from a chemist whom we are not able to cross examine, I do object. Now, secondly, I object to the fact that the report is based on a supposed examination of particles that this gentleman apparently sent to the laboratory, but we have nobody here from the laboratory who can testify that those were actually the particles that were examined and that that test report is productive of the examination done on those three items. Suppose, for example, that the laboratory mixed the thing up and examined three other items. I certainly don't feel that - -

THE COURT:

Mr. Alvine, can I see your report? We are on what page, Mr. Moot?

Arguments pertaining to Admission and Tesimony relating to the Kendall Laboratory Report, beginning at Page 481, 489 thru 494.

MR. MOOT:

The first exhibit, your Honor.

I think perhaps a simple solution would be to pass that section and see if we can get Mr. Kendal up here from Massachusetts.

THE COURT:

Well, if you want to pass it, we can do that. If this was a criminal case, I think you would have certainly a very good argument, but on the other hand, Mr. Alvine is in the business all the time. He is making judgments in which he is putting his name on the line. This is a chemical analysis here, something which is done day in and day out by not only Dr. Kendal, but numerous others. It is a backup of observations of the witness and I can think of numerous reasons why it ought to be admitted.

MR. MOOT:

If I can state my position and draw an analogy, perhaps. In the first place, this is opinion testimony and if, as Mr. Hamsher suggests, we

Arguments pertaining to Admission and Testimony relating to the Kendall Laboratory Report, beginning at Page 481, 489 thru 494.

have not produced Mr. Kendal here, that will go to the weight of the testimony and nothing more. It is analogy perhaps in the case of a doctor who sends the tissue to the pathologist or the bacteria sample to the laboratory, the blood sample to the laboratory and he bases his medical opinion based on what the laboratory tells him. Now, manifestly in the trial of a civil case, lab technicians are not required to come forward and say that the blood sample with that patient's name on it was, in fact, the one that they examined and this is, in fact, what they found and these are their credentials because you would be faced with an unending line of witnesses and completely bring to the halt the operation of the ordinary hospital for every lab report and medical record. The point is we are not here on the substance "yes"

Arguments pertaining to Admission and Testimony relating to the Kendall Laboratory Report, beginning at Page 481, 489 thru 494.

or "no". We are not trying a criminal case as to whether this is or is not a narcotic. We have sworn an expert witness and he is giving the basis of his opinion and the weight of that opinion can be attacked by showing that we have not produced the lab man himself and we have not shown that the samples which he sent to the lab were, in fact, the ones reported, but that goes to the weight and not the admissibility.

THE COURT: I agree.

MR. HAMSHER: Your Honor, I would like to be heard further on this.

THE COURT: Make it very brief, Mr. Hamsher.

MR. HAMSHER: Very briefly, sir, before 1492 there were many books written by many doctors who felt the world was flat, but that doesn't mean that it was. This gentleman is testifying that because a Doctor Kendal, whom I don't know, have never met and do not have

Arguments pertaining to Admission and Testimony relating to the Kendall Laboratory Report, beginning at Page 481, 489 thru 494.

the opportunity to cross examine, has sent in a diagnosis of three things that he claims, or four things that he claims to have examined which I don't even know were the same three or four that he sent in, that that testimony which is bold and simple here saying my opinion should be read here in the courtroom and I am sorry, but I just don't agree with it. I think it is taking unfair advantage of the plaintiff in this case and that's the way I feel and I would be remiss if I did not point it out to the Court.

THE COURT: Anything else?

MR. HAMSHER: No, sir.

THE COURT: Have the jury return. You may inquire about the laboratory report.

MR. HAMSHER: I, of course, will taken an exception to the ruling.

THE COURT: It is already taken, Mr. Hamsher.

(Jury returns to the courtroom.)

* * * * *

13a

**William Alvine Report which contains the Kendall
Laboratory Report.**

WILLIAM ALVINE ASSOCIATES INC.

Fire and Explosion Analysts

Heating and Air Conditioning Consultants

Post Office Box 378 ' Montclair, N.J. 07042 ' 201 746-3377

Richard E. Moot, Esq.
1800 Liberty Bank Building
Buffalo, New York 14202

Att: Mr. Moot:

D-9
Ident. 6-27-74

FIRE ANALYSIS

**El-Gi Holding Corp. &
Lester B. Hall &
Ben Lin ATIMA
46 Skillen Street
Buffalo, N. Y.**

CONFIDENTIAL, PRIVILEGED AND WITHOUT PREJUDICE

William Alvine Report which contains the Kendall
Laboratory Report.

WILLIAM ALVINE ASSOCIATES INC.
Fire and Explosion Analysts
Heating and Air Conditioning Consultants
Post Office Box 378 ' Montclair, N.J. 07042 ' 201 746-3377

December 5, 1973

Re: El-Gi Holding Corp.
46 Skillen St.
Buffalo, N. Y.

PURPOSE OF THE INVESTIGATION

We received the following assignment:

To make a full and complete investigation of the captioned fire to determine:

- (A) Cause of the fire.
- (B) Origin of the fire.
- (B) The responsibility for the fire.

INVESTIGATION COMMITMENTS

In accordance with our commitments, we made inspections of the subject building on July 26, 1972 in order to determine the cause of the hostile fire that occurred at approximately 1:39 AM the morning of May 7, 1972, after careful examinations, investigations and analysis of materials submitted to an independent laboratory, the following are our observations and analysis.

DESCRIPTION OF BUILDING

The subject building was constructed in two sections, the first section (facing Skillen St., north direction) occupied as office areas is constructed of masonry block materials with red brick face, one story high.

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The building section measures approximately 78 feet deep with a basement to be utilized for living quarters. The south building section was a fabricated steel structure with masonry block walls, corrugated sheet metal roof and supported with steel beams. The floor construction was poured concrete slab with asphalt topping without a basement and measuring approximately 78 feet wide by 175 feet deep (north to south direction.)

The south building was constructed equal to a warehouse using suspended gas fired unit heaters and a loading dock at the southeast corner. Floor space was occupied for storage of medical supplies, industrial supplies and used automobiles. The vehicles were stored along the western one quarter section starting at the rear of the front building section extending to the south rear corner. Medical and industrial supplies were stored on wood skids (Pallets) along the center to east walls from the front of the building to the rear.

OBSERVATIONS

[2]

Inspection indicated the south fabricated steel building shell collapsed to within the interior areas with the masonry block walls following. The steel "V" type beams bent with the stress torque revealing intense flame and heat temperatures were produced during the event. The north and south buildings were separated with a fire wall and steel fire doors.

Examination indicated the steel fire doors located on the northwest wall was buckled inward and closed during the incident. The door located on the north east office rear wall section (Keys) indicated intense flame and heat temperatures on the base interior and exterior faces. Clearing of the floor area factually revealed flames burned on the floor within the office and warehouse sections. Charred wood baseboard and glass removed from

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the office rear wall (Keys SE) was laboratory tested and verified the low burning pattern was attributed to a liquid accelerant (gasoline). The liquid type burn patterns followed a trail into the warehouse section. Examination of the flame spread pattern indicated the fire spread was rapid and generated the heat temperatures exceeding the capabilities of the stored stock.

Inspection and removal of spalled and lifted concrete and asphalt materials from the warehouse floor area indicated the saturation of a flammable liquid. Dithizone (load testing) at the laboratory verified the substance was a leaded gasoline.

Review of records indicated the building gas (natural) service line was disconnected by the utility company prior to the fire.

Examination of wood pallets located within the interior and exterior area of the warehouse indicated several were burned from the underside up and including the required circular burn through pattern caused by flammable liquids.

Examination indicated the fire causes were not caused by electrical faults and or malfunctions. The locations of the fire set areas along with the low regional burning patterns factually excludes the accidental causes.

The "smoldering" fire theory becomes completely moot in light of the fact that a quantity of gasoline in fact was ignited. The "smoldering" fire idea initially was advanced in the absence of the knowledge that in fact the fires had been set with gasoline which is the apparent cause and explanation for the rapid and uncontrollable fire spread.

[3]

The stored vehicles and their gas tanks were victims of the fire and contributed a minimum to the extent of damages.

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Glass materials including highly polished substances indicate the color characteristic within the spectrum of reddish brown with the coating substance in a form that can be peeled or flaked, the direct production of ignited gasoline. The nature of the event could not be evaluated as accidental, therefore, the various samples were removed from the buildings and forwarded to Kendall Infra-red Laboratories for chemical analysis. The report is appended as Exhibit No. 1.

The fire spread patterns indicates the individual (s) responsible for the set up had knowledge of the building and saturation requirements, the extent of damages places the individual (s) in the category exceeding the amateur stage.

Total destruction of dwellings and buildings falls within the experienced "pay cash for ashes" arsonist. The arsonist escaping from the fire indicates a timing device was used for ignition of the gasoline. The office wall sections were splashed with the product along with saturating the floor in various stations, using the trail and station method along with gasoline filled plastic bags having pinhole punctures, suspending them in the area of wood pallets and combustible materials. The fact of the rapid fire involvement indicates the gasoline produced the vapors required and the arsonist had knowledge for such. The first stage of this type of event can best be described as a "whoosh" muffled type noise.

ANALYSIS

It is the opinions of this organization the character of the fire, the low lying burning pattern, the extent of fire damages including the positive detection of gasoline and lead found in the samples, conclude the facts that gasoline was involved in the initiation of the fire. It is further reasonable to assume the fire set up can be classified

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Laboratory Report.

with the intent, arson with malice aforethought. The individual (s) responsible had knowledge of the building layout and contents.

The incident is one considered a criminal act, therefore, the police and office of the prosecutor should be alerted accordingly.

DESCRIPTIVE LOCATIONS

The following observed facts are descriptively indicated, both in color and black/white photographs, for clear identification of the subjects and are appended as Exhibit No. 2.

[4]

NO. 1:

View of the office building area that was occupied by Keys indicating the remains of the building structure. The photograph is in a western direction. The office area contained a rear entrance door in a southern direction along with a door to the exterior of the building at the east wall. The samples removed from the office area occupied by Keys indicated the flammable substances of gasoline.

NO. 2:

View of the building structure in an eastern direction indicating the flame escapement directly above the door positions revealing the establishment of flames within the interior areas.

NO. 3:

The remains of the building east wall warehouse section indicating the collapsed structure.

NO. 4:

View of the building west wall structure in a south

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Laboratory Report.

to north direction indicating the remains of the collapsed steel structure. Examination of the vehicles in the area indicated they were subjected to foreign flames.

NO. 5:

Northeast view of the building structure remains indicating the area used for loading at the rear of the warehouse section.

NO. 6:

View of the building structure at the west section indicating the collapsed steel structure and stored vehicles.

NO. 7:

View of the stored vehicles indicating they were victims of the fire.

NO. 8:

View of the shop area in the automobile storage section indicating the equipment was equally subjected to a foreign fire. The mechanical devices and equipment indicated they did not cause or contribute to the extent of damages that occurred within the building.

[5]

NO. 9:

View of one gas fired unit heater remains indicating the unit was not flame damaged due to escapement of natural gases prior to or during the event. Review indicated the gas was disconnected at the supply meter prior to the fire incident.

NO. 10:

View of the floor area within the area where gloves were stored indicating the spalling concrete floor and flowed asphalt material where the gasoline was saturated prior to the occurrence.

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NO. 11:

Close up view of the items described in photograph #10 indicating the spalling and or raised concrete floor area where the liquid substance was saturated.

NO. 12:

View of one wood pallet and or skid indicating the puddle type burns where the liquid substance was saturated prior to ignition.

NO. 13:

Close up view of the wood pallet indicating the described river and or flood type saturated patterns where the accelerated chemical caused burning through in flow pattern forms.

NO. 14:

View of a wood storage shelf indicating the deep burned undersides and wood legs revealing that flames were established on the floor area prior to spreading to combustible materials stored within the area. The top surfaces of the shelves indicate they were not charred to a depth as the underside surfaces.

NO. 15:

View of the south rear office wall structure indicating the entrance door to within the office area occupied by Keys. The burn pattern on the remaining wall structure indicates flames were established on the floor area prior to spreading in directions of adjacent combustible materials.

NO. 16:

View of the southeast corner office area occupied by Keys indicating the described splatter and splash type

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pattern where the liquid substance was saturated. The
burned through wood panel remains clearly indicates a
splash type of burn pattern.

[6]

Charred debris and glass removed from the office
section factually indicated the gasoline substance was
the accelerant used.

Photograph #16 was taken by a professional photog-
rapher on or about July 28, 1972.

We trust that this report is sufficiently complete.
More detailed descriptions can be made available if
required.

Respectfully submitted.

Very truly yours,

WILLIAM ALVINE ASSOCIATES INC.

s/ William Alvine
William Alvine-President

s/ Joe E. Ross, P. E.
Joe E. Ross, P. E.
Vice President-Engineering

WA:JER/cw

William Alvine Report which contains the Kendall
Laboratory Report.

PL 4-5205

1030 Sherman Ave.

Plainfield, N. J.

July, August only

207-928-2695

Center Lovell, Maine

KENDALL INFRARED LABORATORIES
Consulting Chemists and Spectroscopists
Infrared Specialists
David N. Kendall, PhD., Director

August 22, 1972

Mr. William Alvine
William Alvine Associates, Inc.
P. O. Box 378
Montclair NJ 07042

Re: Your request of 8/3/72
Samples received 8/3/72
REPORT #6844

Dear Mr. Alvine:

Following is report #6844, done at your request of
8/3/72, covering analytical work on four samples re-
ceived 8/3/72:

Subject: Four Fire Samples, Determination of Lead and
Hydrocarbons in

Object: To determine the presence or absence of lead
and of hydrocarbons in the Subject samples
described below

Investigation Methods Employed: Extractions, Qualita-
tive Infrared Spectroscopy, Dithizone Tests for Lead

Description of Samples: Received from you on 8/3/72
were the following samples taken from the scene of
a fire which occurred at the El-GI Holding Corpora-
tion, 46 Skillen St., Buffalo, N. Y.

William Alvine Report which contains the Kendall
Laboratory Report.

<u>Sample No.</u>	<u>Description</u>
1	Sample from Keys Office
2	Sample from Hospital Supply area
3	Samples from C. B. Board Room
7	Sample from skid, outside building

Results: 1. Lead was found present in samples 1, 3,
and 7.
2. Gasoline was found present in sample 1.

Comment on Results: Should any questions arise about
the results of this report, kindly get in touch with us.

Details: The four samples were each separately washed
twice with 25 ml. of carbon tetrachloride (CCl_4) each
time and filtered. The combined filtrates were then con-
centrated into small volume by boiling, the concentrates
cast onto NaCl plates, and residual CCl_4 removed by
heating in an oven for 0.5 hours at 100°C . Rocksalt
infrared (2 to 15 microns) spectra were then run on the
four evaporated extracts vs. air.

The resulting spectra were carefully compared against
known spectra of gasoline, kerosene, mineral spirits,
and other highly flammable hydrocarbons. These com-
parisons showed gasoline was present in sample 1. The
other components which were present in [2]

the extracts of the samples were identified, at least as
to class, by interpreting the spectra and by comparison
against known spectra.

1. The extract of sample 1 was found to contain:
 - a. a butadiene-styrene copolymer
 - b. an ester
 - c. a ketone
 - d. gasoline

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2. The extract of sample #2 was found to contain:
 - a. a ketone
 - b. a phthalate ester
 - c. polypropylene
 - d. polyethylene
3. The extract of sample #3 was found to contain:
 - a. a ketone
 - b. an ester
 - c. polystyrene
 - d. a wax or polyethylene
4. The extract of sample #7 was found to contain:
 - a. polypropylene
 - b. polystyrene
 - c. a ketone

After allowing the samples to air-evaporate residual CCl_4 , each was thoroughly washed with 50 ml. of 1:1 nitric acid and filtered. The procedure for the determination of lead was carried out upon each filtrate using "Improved Dithizone Method for Determination of Lead", L. J. Snyder, Analytical Chemistry, 19, 684 (1947). A comparison blank comprised of 25 ml. of 1% nitric acid was carried thru the procedure and no lead was found present in the Comparison blank. The results of the tests showed lead was present in samples 1, 3, and 7.

A separate billing is enclosed. It is a pleasure to be of service.

Very truly yours,

KENDALL INFRARED
LABORATORIES

s/ David N. Kendall
David N. Kendall

DNK/rsk

**Ruling of Court Limiting the Plaintiff's Examination
of Dr. Fatta, at Page 797.**

THE COURT: Have Mr. Fatta come in and have the jury come back. Mr. Hamsher, this is rebuttal testimony. You shall complete it in ten minutes. In ten minutes, that will be all, period. It seems to me he can give his opinion very quickly. We do not have to have, - we will recognize very briefly his qualifications.

(Jury returns to the courtroom.)

A N G E L O M. F A T T A (74 Franklin Street, Buffalo, New York), a witness called by and in behalf of the plaintiff in rebuttal, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. HAMSHER:

THE COURT: At this time, ladies and gentie-

* * * * *





Records and Briefs for State and Federal Courts

SPAULDING LAW PRINTING CO.

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RUSSELL D. HAY, owner

AFFIDAVIT OF SERVICE

RE: ELGI HOLDING, INC. v. INSURANCE COMPANY OF NORTH AMERICA

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:
CITY OF SYRACUSE)

EVERETT J. REA , being duly sworn, deposes and says:

That he is associated with Spaulding Law Printing Company of Syracuse, New York, and is over twenty-one years of age.

That at the request of F. BERNARD HAMSHER, Attorney for Appellant,

he personally served three (3) copies of the printed ~~[Record]~~ [Brief] ~~[Appendix]~~ of the above-entitled case addressed to:

OHLIN, DAMON, MOREY, SAWYER & MOOT
Attorneys at Law
1800 Liberty Bank Bldg.
Buffalo, N. Y. 14202

by depositing true copies of the same securely wrapped in a postpaid wrapper in a Post Office maintained by the United States Government in the City of Syracuse, New York on January 21, 1975.

Everett J. Rea
.....

Everett J. Rea

Sworn to before me this 21st
day of January , 1975.

Russell D. Hay
Commissioner of Deeds

cc: F. Bernard Hamsher, Esq.